

# Federal Requirements “Contractor Version”

There are a number of Federal laws, executive orders and government-wide policies that apply to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. Since Federal capitalization grant money was used to seed the State Revolving Fund (SRF) program, any money received through the SRF program is subject to these Federal “authorities”. As an example, the environmental evaluation section, covered in the Preliminary Engineering Report (PER) guideline, stems from environmental authorities, such as, the Endanger Species Act and Wild and Scenic Rivers Act. In addition, there are social policy and economic authorities that must be complied with in order to receive funding through the SRF program. These authorities include:

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Uniform Relocation and Real Property Acquisition Act, Pub. L. 91-646, as amended
- Women’s and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Equal Employment Opportunity, Executive Order 11246
- Debarment and Suspension, Executive Order 12549
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

This guide discusses, in more detail, the requirements of these authorities and explains the actions required of the contractors involved in an SRF funded project. Please review each section and complete any associated documents.



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## **DISADVANTAGED BUSINESS ENTERPRISE COMPLIANCE**

Project sponsors are required to ensure, to the fullest extent possible, that *disadvantaged businesses* have the opportunity to participate in a fair share of the contracts and subcontracts awarded in a SRF-funded project. This is required by the following executive orders and acts which EPA has determined apply to the SRF loan program:

- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988

DHEC administers this federal requirement.

### **DBE DEFINITION**

A Disadvantaged Business Enterprise (DBE) is defined as a business which meets the criteria cited below:

- ☐ Owned by socially disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities; and
- ☐ Owned by economically disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.

For purposes of this definition, disadvantaged individuals include the following:

- |                      |  |
|----------------------|--|
| ➤ Black Americans    | ➤ Asian Pacific Americans                      |
| ➤ Hispanic Americans | ➤ Native Hawaiian Organizations                |
| ➤ Native Americans   | ➤ Women  |
| ➤ Indian Tribes      | ➤ Historically Black Colleges and Universities |

To qualify as a DBE firm, at least 51 percent of an independent business must be owned and controlled by a disadvantaged individual. The minority or woman owner's interest must be real, substantial and continuing. The determination of control depends on the extent of the minority or woman owner's control and involvement in the day-to-day management of the business enterprise.

### **DBE CERTIFICATION**

DHEC does not determine the DBE status of businesses. Instead, the South Carolina SRF Program accepts certification of DBE status from other sources already established to make this determination, such as:

- South Carolina Statewide Minority Business Development Center (MBDC)
- South Carolina Governor's Office of Small & Minority Business Assistance
- South Carolina Department of Transportation (for women owned businesses)
- Other agencies or organizations that provide procurement assistance to DBEs if their definition of a DBE matches the criteria established above.

## DBE REQUIREMENTS

Project sponsors must assure that DBE firms have the opportunity to participate in a fair share of the funds awarded for contracts and subcontracts for supplies, construction, equipment or services. The DBE "fair share" goal is a reasonable amount of funds proportionate to the project's construction costs and is usually established as a participation rate of 7.5% for minority business enterprises (MBE) and 0.5% for women owned business enterprises (WBE). Minority and women's business enterprises are separate business groups; therefore, separate goals for each group are stated. The MBE participation goal cannot be satisfied by the use of a WBE firm.

The project sponsor is required to include the fair share goals in their bid documents and to ensure all of their prime contractors include the fair share goals in their bid documents for subcontracts. The fair share goal is subject to change each fiscal year. Therefore, it is the sponsor's responsibility to check with the SRF Financial/Procurement Manager for the current fair share percentage to be included in bid documents.

The DBE regulations require that project sponsors and their prime contractors comply with the following six affirmative steps:

1. Place qualified disadvantaged businesses on solicitation lists;
2. Assure that disadvantaged businesses are solicited whenever they are potential sources;
3. Divide project requirements, when economically feasible, into small tasks or quantities to maximize participation by disadvantaged businesses;
4. Establish delivery schedules, where work requirements permit, that encourage disadvantaged business participation;
5. Use the services of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce, as appropriate; and
6. Require the contractor to take the affirmative steps identified above, if subcontracts are awarded.

## IMPLEMENTATION OF DBE REQUIREMENTS

The following is recommended for accomplishing the six affirmative steps of the DBE program:

### Project Design Phase

The process for achieving the DBE goals begins during the design phase of the project. The standard SRF plans and specifications package contains a section called SRF Contract Documents. This section contains information on the DBE requirements for the project and clearly states the project's MBE and WBE goals. **It is mandatory for this section to be included verbatim in the project specifications.**

A unit price bid schedule is recommended over a lump sum bid schedule. Dividing work requirements into smaller segments will encourage participation by disadvantaged businesses. Some examples include masonry, plumbing, electrical, excavation, clearing and grubbing, sodding and seeding, landscaping, roofing, mechanical, sheet metal, curb and gutter, paving, hauling, fencing, tile, painting, steel erection, pipe installation, line work, heating, ventilation and air conditioning, building supplies, architect and engineering services and consultant work.

## **Bidding Phase**

The obvious key toward successfully meeting the DBE requirements is the solicitation of minority and women's business enterprises. The following three strategies will aid in this effort:

1. Strategic placement of the Invitation for Bid (IFB) advertisement in local newspapers of general circulation, MBE/WBE publications, and statewide or regional newspapers of general circulation will help the project sponsor assure that disadvantaged businesses are actually solicited for participation in the project. The project should be advertised for a minimum of thirty (30) days in advance of bid opening.

Under the SRF loan program, one of the requirements for construction contract approval is that the prime contractor must document to DHEC that he has made good faith efforts to meet the project's DBE requirements. The most effective way for the project sponsor to assure compliance is to inform all prospective bidders of the DBE requirements in the IFB. Therefore, it is recommended that the following information be included in the IFB:

- ☐ A statement that prospective bidders must implement procedures that ensure that DBE firms are given opportunities for meaningful participation if subcontracts are awarded; and
  - ☐ A statement informing the prospective bidders of the project's DBE goals.
2. Send a copy of the IFB and a set of the project's plans and specifications to the South Carolina Statewide Minority Business Development Center (see Appendix A), retaining a copy of the transmittal letter for documentation purposes. The MBDC assists minority businesses in securing procurement contracts. The MBDC will use the projects' plans and specifications to assist their minority clients with technical assistance and bid and/or proposal preparation. Announcements of any prebid conferences should also be sent to the MBDC for distribution.
  3. Developing a DBE listing for the use of potential contractors is highly recommended. Providing the potential contractors with a list of qualified, bona fide disadvantaged business enterprises will help the project sponsor meet the DBE requirements. This can be accomplished by including the project's DBE listing in the Invitation for Bid Documents. Each potential bidder will have easy access to identified disadvantaged businesses from which to solicit subcontract proposals.

Appendix A lists state and federal agencies that can help in developing a DBE procurement list. These agencies maintain listings of disadvantaged businesses which can form the basis for a project-specific DBE listing. Any DBE firm that directly expresses interest in your project can be added to this list. This will provide a pool of DBE firms for proposal solicitation. Direct mailing of the IFB advertisement to all the firms on your DBE listing is also suggested.

## **Preconstruction Phase**

The project sponsor should take two more steps to meet the DBE requirements. The first is establishing delivery schedules, work requirements permitting, which will encourage participation by disadvantaged businesses (affirmative step number 4). This can be done by:

- Assisting the prime contractor(s) in developing realistic delivery schedules,
- Encouraging the prime contractor(s) to consider lead times and scheduling requirements needed by disadvantaged business firms for participation, and

- Helping the prime contractor(s) maintain as much flexibility as possible, without jeopardizing the work, to facilitate DBE participation.

Second, the project sponsor *must*, in accordance with affirmative step number 6, *require that the prime contractor take the same six affirmative steps* if the prime contractor intends to award subcontracts. However, the prime contractor(s) cannot be forced to subcontract any work.

## **DBE DOCUMENTATION**

The tentatively selected bidder is required to submit DBE documentation in duplicate to the project sponsor after bid opening. The project sponsor must forward one copy of the information to DHEC. Since the project's plans and specifications serve as documentation of the **project sponsor's** prebid efforts to provide opportunities for DBE participation, the DBE documentation submitted will primarily show the **prime contractor's** efforts to achieve the project's DBE goals.

Please note that the prime contractor(s) cannot be forced to subcontract any work. If the prime contractor elects to perform the work using only his own work force, the only documentation needed is an executed "Prime Contractor's Subagreement Certification" (DHEC Form 3591), see Appendix B, indicating the contractor has elected not to let subcontracts. However, please be aware that subcontractor utilization is monitored during construction. The project sponsor's inspector is required to list all subcontractors on the job site in the "Monthly Construction Inspection Report(s)" (DHEC Form 3587) provided to DHEC. Use of any unapproved subcontractor on the project may delay loan draw requests or result in costs associated with that subagreement declared ineligible for SRF assistance.

### **Prime Contractor's Good Faith Efforts**

If the prime contractor has met the project's DBE goals, submittal of the DBE documentation will be a simple and straightforward process. However, if the DBE goals have not been achieved, the prime contractor will be required to submit documentation of all good faith efforts undertaken to achieve the objectives and accomplish the six affirmative steps.

- *If the DBE goals have been met*, only the following documentation is required:
  - ☐ An executed "Prime Contractor's Subagreement Certification" (DHEC Form 3591), see Appendix B, listing *all* proposed subcontractors
  - ☐ Certification from each proposed DBE firm declaring its status as a MBE or WBE firm
- *If the DBE goals have not been met*, documentation of all good faith efforts taken to accomplish the six affirmative steps must be submitted. Such documentation includes:
  - ☐ An executed "Prime Contractor's Subagreement Certification" (DHEC Form 3591), see Appendix B, listing *all* proposed subcontractors
  - ☐ Certification from each proposed DBE firm declaring its status as a MBE or WBE firm
  - ☐ Copies of letters sent to DBE firms requesting proposals for specific subcontracting opportunities and encouraging inquiries for further details. Such letters should be postmarked no later than 15 days before bids are due to allow DBE firms sufficient time to develop quotes or proposals. Letters of a general nature which do not request quotes or proposals for **specific scope/volume of work** will not be acceptable as good faith efforts.

- ❑ Certified copies of newspaper advertisements requesting proposals from DBEs for **specific subcontracting opportunities** no less than 15 days before bids are due. Advertisements should be in newspapers of general circulation in the project's general area and in minority owned, minority targeted publications if available.
- ❑ Copies of letters asking assistance from the South Carolina Statewide Minority Business Development Center, the South Carolina Governor's Office of Small & Minority Business Assistance, or other agencies or organizations that provide procurement assistance to DBEs.
- ❑ A list of those DBE firms from whom bids were received but were not awarded a subcontract. If a DBE firm did not receive a subcontract, the documentation must show that the proposed subcontractor offered a lower price than the DBE firm and that *the scope of work subcontracted was the same scope of work bid on by the DBE* and not a reduced portion thereof.

Upon submittal of the DBE package, DHEC will determine if deficiencies exist. If any such deficiencies are correctable, the project sponsor will be informed as to what actions must be taken. The proposed construction contract award will not be approved until the corrective action has been taken. Failure by the contractor to take the required corrective action or to explain to DHEC's satisfaction why the action cannot be taken may result in a finding by the project sponsor that the prime contractor is nonresponsive. This may be grounds for rejecting the bid.

**Please note that DHEC cannot authorize the project sponsor to award the construction contract(s) until the project's good faith efforts are approved.**

## **REPORTING REQUIREMENTS**

The DBE approval is contingent upon the prime contractor's commitment to use the services of the DBE firm(s) reported. After the SRF project sponsor awards the construction contract(s), copies of each DBE subcontract must be forwarded to DHEC as soon as possible.

Any proposed changes from the approved DBE participation must be reported to DHEC prior to initiation of the action, with the reason for the proposed deviation. DHEC must give approval for the change. Failure to receive approval may result in costs associated with that subagreement declared ineligible for SRF assistance.

If deviations occur, the prime contractor must continue to demonstrate positive efforts by soliciting participation of other qualified DBE firm(s) as substitutes. Also, if the prime contractor decides, at a later date, to subcontract additional portions of this project not approved by DHEC, he must again provide DHEC with evidence of the positive steps taken to use DBE businesses and obtain DHEC approval prior to entering into any subagreement.

The sponsor's project inspector is required to list all subcontractors on the job site in the Monthly Construction Inspection Reports provided to DHEC. **Use of any unapproved subcontractor on the project may delay loan draw requests or result in costs associated with that subcontract declared ineligible for SRF assistance.**

### **MBE/WBE Quarterly Reports**

Each project sponsor is required to submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements" (EPA Form 5700-52A), see Appendix C,

if they or their prime contractors have contracts with minority or women owned businesses. Submission of this report begins in the federal fiscal year quarter the project sponsor awards its first contract and continues until all DBE contracts have been reported. Submission of this report is required even if there is no MBE/WBE activity to report in that particular quarter (this is called a negative report).

The prime contractor should submit MBE/WBE Quarterly Reports to the project sponsor in duplicate within 10 days of the end of the quarter (January 10, April 10, July 10, and October 10). The project sponsor should forward one copy of this report (adding their own DBE information to the report, if applicable) to this office within 15 days of the end of the federal fiscal quarter. **Failure to meet this requirement may result in loan draw requests being held pending receipt of the MBE/WBE Quarterly Utilization Report.**

## EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Discrimination in employment practices on the basis of race, color, religion, national origin, sex, age or handicap is prohibited. The affirmative action program is designed to enhance hiring, training and promotion opportunities for minorities and women and is governed by the federal authority:

➤ Equal Employment Opportunity (EEO), Executive Order 11246.

These provisions, applicable to SRF projects, commit the contractor and subcontractor to maintain a policy of nondiscrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire and train employees without regard to race, color, sex, age, handicap, religion or national origin.

**By submission of a bid, each bidder acknowledges that he understands and agrees to be bound to the EEO requirements and to also contractually bind each subcontractor if applicable.**

### EEO DOCUMENTATION

The standard SRF plans and specifications package contains a section called SRF Contract Documents. This section contains information on the EEO requirements for the project. **It is mandatory for this section to be included verbatim in the project specifications. Also, prime contractors must include these provisions in any subcontracts over \$2,000.**

The EEO documentation required by Special Notice #1 of Executive Order 11246, as amended, must be submitted for **all prime contractors and any subcontractor whose contract amount exceeds \$10,000.** Special Notice #1 requires documentation of the following:

- ☐ Project number. Project location. Type of construction.
- ☐ Copy of "Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity" (DHEC Form 3592), see Appendix D.
- ☐ Copy of EEO-1 Report (Employer Information Report, annually submitted to the Equal Employment Opportunity Commission). (This report is required for any company with 100 or more employees. If the construction company does not meet this criterion, please provide DHEC with a written statement documenting the number of employees.)
- ☐ Copy of the Affirmative Action Plan of the contractor. Indicate company official responsible for EEO.
- ☐ List of current construction contracts, with dollar amount. List contracting federal agency, if applicable.
- ☐ Statistics concerning company's work force (permanent and temporary) by sex, race, trade and age. List any handicapped employees.
- ☐ List of employment sources for the project in question. If union sources are used, indicate percentage of minority membership within the union crafts.
- ☐ Anticipated employment needs for this project, by sex, race, and trade, with estimate of minority participation in specific trades.

- ☐ List of subcontractors (name, address and telephone) with dollar amount and duration of subcontract. A “Prime Contractor’s Subagreement Certification” (DHEC Form 3591), in Appendix B, must be used to provide this information. *Subcontractors whose contract amount exceeds \$10,000 must submit the above eight items.*
- ☐ List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract. A “Prime Contractor’s Subagreement Certification” (DHEC Form 3591), in Appendix B, must be used to provide this information.
- ☐ Contract Price. Duration of prime contract.
- ☐ MBE Documents - See special instructions regarding use of Minority Owned, Women Owned and Small Businesses.

### **REPORTING REQUIREMENTS**

The tentatively selected bidder is required to submit the above EEO documentation in duplicate to the project sponsor after bid opening. The project sponsor must forward one copy of the information to DHEC as part of their bid package.

**Failure to comply with the EEO requirements may be grounds for rejecting the bid. DHEC cannot authorize the project sponsor to award the construction contract(s) until this requirement is met.**

## **PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NONPROCUREMENT PROGRAMS**

Under the federal authorities:

- Debarment and Suspension, Executive Order 12549
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,

prime contractors are required to certify that they are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in a contract using federal funds. In turn, prime contractors will require subcontractors whose contract amount is expected to equal or exceed \$25,000 to also submit a “Certification Regarding Debarment, Suspension and Other Responsibility Matters” (DHEC Form 3590), see Appendix E.

## **APPENDIX A**

### **Contacts for Procurement of DBEs**

- Office of Small & Minority Business Assistance  
South Carolina Office of the Governor  
1205 Pendleton Street, Suite 418  
Columbia, South Carolina 29201  
Telephone: (803) 734-0657
- South Carolina Department of Transportation  
Office of Compliance, Room 403  
Post Office Box 191  
Columbia, South Carolina 29202  
Telephone: (803) 737-1372
- South Carolina Statewide Minority Business Development Center  
2111 Bull Street  
Columbia, South Carolina 29201  
(803) 779-5905

## **APPENDIX B**

### **Prime Contractor's Subagreement Certification (DHEC Form 3591)**



**STATE OF SOUTH CAROLINA  
STATE REVOLVING FUND (SRF) PROGRAM  
PRIME CONTRACTOR'S SUBAGREEMENT CERTIFICATION**

Project Name:

Project Number:

Contractor's Name:

Contractor's Telephone Number:

Contractor's Address:

**SECTION I - INSTRUCTIONS**

All prime contractors are required to certify whether or not they plan to utilize subcontractors for any portion of work throughout the life of their contract.

**SECTION II - CERTIFICATION**

I, as the authorized representative of the above named contracting firm, certify that we:



Plan to subcontract a portion of this project and will submit to SCDHEC evidence of the positive steps taken to utilize minority and women's businesses as required by Executive Order 11246 prior to entering into any subagreement. We agree to submit MBE/WBE quarterly utilization reports (U.S. EPA Form 5700-52A). (Please list each tentative subcontractor on the back of this form.)



Do not elect to subcontract any portion of this project. We understand that should we elect, at a later date, to subcontract a portion of this project, we will be required to provide evidence of the positive steps taken to utilize minority and women-owned businesses as required by Executive Order 11246 prior to entering into any subagreement. Failure to do so may result in costs associated with that subagreement declared ineligible for SRF assistance.

Name and Title:

Signature:

Date:

**Please list all tentative subcontractors you plan to use for this project, identifying whether or not they are a minority business enterprise (MBE) or a women-owned business enterprise (WBE). If more space is needed, please attach an additional sheet using the same format as below.**

4. Type of Work:  
Subcontractor's Name and Address:  
  
Contact Person:  
Telephone Number:  
Subcontract Amount:  
Duration of Subcontract:  
MBE or WBE?

5. Type of Work:  
Subcontractor's Name and Address:  
  
Contact Person:  
Telephone Number:  
Subcontract Amount:  
Duration of Subcontract:  
MBE or WBE?

6. Type of Work:  
Subcontractor's Name and Address:  
  
Contact Person:  
Telephone Number:  
Subcontract Amount:  
Duration of Subcontract:  
MBE or WBE?

7. Type of Work:  
Subcontractor's Name and Address:  
  
Contact Person:  
Telephone Number:  
Subcontract Amount:  
Duration of Subcontract:  
MBE or WBE?

**List of subcontract work yet to be committed with approximate price and duration of subcontract.**

1.  
  
2.  
  
3.  
  
4.

*Submit to: SCDHEC, Water Facilities Permitting Division, SRF Section, 2600 Bull Street, Columbia, SC 29201*

## **APPENDIX C**

**MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements (EPA Form 5700-52A)**

# U.S. ENVIRONMENTAL PROTECTION AGENCY

## MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND INTERAGENCY AGREEMENTS

### PART I. (NEGATIVE REPORTS ARE REQUIRED)

<b>1A. FEDERAL FISCAL YEAR</b>  19____		<b>1B. REPORTING QUARTER (Check appropriate box)</b>  <input type="checkbox"/> 1st(Oct-Dec) <input type="checkbox"/> 2nd(Jan-Mar) <input type="checkbox"/> 3rd(Apr-Jun) <input type="checkbox"/> 4th(Jul-Sep) <input type="checkbox"/> Annual					
<b>2. FEDERAL FINANCIAL ASSISTANCE AGENCY</b> (EPA, Office, Address)		<b>3. REPORTING RECIPIENT (Name and Address)</b>					
<b>2A. REPORTING CONTACT</b>	<b>PHONE:</b>	<b>3A. REPORTING CONTACT</b>	<b>PHONE:</b>				
<b>4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER</b>		<b>4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM</b>					
<b>5A. TOTAL GRANT MONEY</b>  \$		<b>5B. TOTAL CONTRACT/PROCUREMENT AMOUNT THIS QUARTER</b>  \$					
\$		<b>5C. RECIPIENT'S MBE/WBE GOALS</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">MBE</td> <td style="width: 25%;">%</td> <td style="width: 25%;">WBE</td> <td style="width: 25%;">%</td> </tr> </table>		MBE	%	WBE	%
		MBE	%	WBE	%		
<b>5D. ACTUAL MBE/WBE PROCUREMENT ACCOMPLISHED THIS REPORTING PERIOD</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">MBE \$</td> <td style="width: 50%;">WBE \$</td> </tr> </table>		MBE \$	WBE \$				
MBE \$	WBE \$						
<b>5E. NEGATIVE REPORT (Check)</b>  <input type="checkbox"/> SEE INSTRUCTIONS		<b>6. COMMENTS:</b>					
<b>7. NAME OF AUTHORIZED REPRESENTATIVE</b>				<b>TITLE</b>			
<b>8. SIGNATURE OF AUTHORIZED REPRESENTATIVE</b>		<b>DATE</b>					



## MBE/WBE PROCUREMENTS MADE DURING QUARTER

### PART II.

Procurement Made By		Business Enterprise		\$ Value of Procurement	Date of Award MM/DD/YY	Type of Product or Service <sup>1</sup> (Enter Code)	Name/Address of MBE/WBE Contractor or Vendor
Recipient	Other	Minority	Women				

<sup>1</sup>Type of product or service codes:

1 = Agriculture  
2 = Mining  
3 = Construction  
4 = Manufacturing

5 = Transportation  
6 = Wholesale Trade  
7 = Retail Trade  
8 = Finance, Insurance, Real Estate

9 = Services  
a = Business Services  
b = Professional Services  
c = Repair Services  
d = Personal Services

10 = Other

# INSTRUCTIONS

## MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND INTERAGENCY AGREEMENTS EPA FORM 5700-52A

### A. General Instructions

MBE/WBE utilization is based on Executive Orders 11625, 12138, 12432, P.L. 102-389 and EPA Regulations Part 30 and 31. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to EPA within one month following the end of each Federal fiscal year quarter or annually as in the agreement.

### B. Definitions

*Procurement* is the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A *contract* is a written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for equipment, services, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

A *minority business enterprise* (MBE) is a business that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asia Pacific Americans, or other groups whose members are found to be

disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting contact at EPA can provide additional information.

A *woman business enterprise* (WBE) is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are required to be documented:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

### C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable reporting box quarterly or annually. (Federal fiscal year runs from October 1 through September 30.)
2. **“Will be provided by EPA.”**
3. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.
- 4a. Grant/cooperative agreement or Interagency Agreement number assigned by EPA.
- 4b. Refer back to grant document for this information.
- 5a. Total grant amount which includes Federal funds plus recipient matching funds and funds from other sources.
- 5b. Total contracts/procurements awarded this quarter. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/procurement centers).
- 5c. Portion of total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of EPA, a fair share goal shall be determined by each recipient.
- 5d. Dollar amount of all MBE/WBE procurement amounts awarded under this reporting period. (These amounts include the Federal, State and local shares in the procurement awards).
- 5e. Check only if no procurements were made this reporting period. (If dollar amounts are shown in 5b. indicate reason in 6. Comments Section).
6. Additional comments or explanations. Please refer to specific item number(s) if appropriate.
7. Name and title of official administrator or designated reporting official.

8. Signature and month, day year report submitted.

### D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.
2. Check MBE or WBE.
3. Dollar value of procurement.
4. Date of award, shown as month, day, year.
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (eg., enter 1 if agriculture, 2 if mining, etc.).
6. Name and address of MBE/WBE firm.

This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30 and 31); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, D.C. 20460. Include

the OMB Control number in any correspondence. Do not sent the completed form to this address.

## **APPENDIX D**

### **Certification of Proposed Prime or Subcontractor Regarding Equal Employment Opportunity (DHEC Form 3592)**



**STATE OF SOUTH CAROLINA  
STATE REVOLVING FUND (SRF) PROGRAM  
CERTIFICATION BY PROPOSED PRIME OR SUBCONTRACTOR  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

Name of Prime Contractor \_\_\_\_\_

Project No. \_\_\_\_\_

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246, Part II, Section 203 (b), (30 F.R. 12319-25). Any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicated that the prime or subcontractor has not filed a compliance report due under applicable instruction, such contractor shall be required to submit a compliance report.

**CONTRACTOR'S CERTIFICATION**

Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Compliance Reports were required to be filed in connection with such contract or subcontract.  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. If answer to item 3 is NO, please explain in detail on reverse side of this certification.

**Certification** - The information above is true and complete to the best of my knowledge and belief. (A willfully false statement is punishable by law - U.S. Code, Title 18, Section 1001).

\_\_\_\_\_  
Name and Title of Signer (Please Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Submit to:  
SCDHEC, Water Facilities Permitting Division, SRF Section, 2600 Bull Street, Columbia, SC 29201*

## **APPENDIX E**

**Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form 3590)**



Project No.: \_\_\_\_\_

Sponsor: \_\_\_\_\_

**STATE OF SOUTH CAROLINA  
STATE REVOLVING FUND (SRF) PROGRAM  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Name of Firm Submitting Bid

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

I am unable to certify to the above statements. Attached is my explanation.

Prime or Subcontractor's Name: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

*Submit to:  
SCDHEC, Water Facilities Permitting Division, SRF Section, 2600 Bull Street, Columbia, SC 29201*